

WILLIAMS MULLEN

Ethan R. Ware
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March 12, 2019

VIA CERTIFIED MAIL

Freedom of Information Office
United States Environmental Protection Agency
Region 4
Atlanta Federal Center
61 Forsyth Street
Atlanta, Georgia 30303 - 8960

RE: Burlington Industries Cheraw Superfund Site – Freedom of Information Request
Expedited

Dear FOIA Officer:

We received a Special Notice Letter dated March 6, 2019 from EPA Region 4 regarding "Remedial Investigation/Feasibility Study for Operable Unit 2 at Burlington Industries Cheraw Superfund Site in Cheraw, Chesterfield County, South Carolina." On page 1 of the Special Notice Letter under the section entitled "Background", EPA states:

Based on an extensive review of records related to the release and/or disposal of hazardous substances at the Site, the EPA identified Highland as a potentially responsible party (PRP) that contributed hazardous substances to Operable Unit 2 of the Site.

A copy of the Special Notice Letter is enclosed as Attachment A for your ease of reference.

Under the provisions of the Freedom of Information Act, 5 USC § 552, we hereby request copies of the following documents:

- All records reviewed by EPA related to the release and/or disposal of hazardous substances at the Site by which EPA identified Highland as a PRP which contributed hazardous substances to Operable Unit 2 of the Site.

We would appreciate an expedited response to this request and agree to reimburse your department for reasonable costs associated with copying and forwarding these documents to me. Should you have any questions, please do not hesitate to call me for clarification using my contact information listed above.

Sincerely,



Ethan R. Ware, Esq.

cc via email: Teresa Mann, Esq., mann.teresa@epa.gov



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

MAR 06 2019

**SPECIAL NOTICE LETTER
URGENT LEGAL MATTER - PROMPT REPLY NECESSARY
SENT VIA EMAIL AND OVERNIGHT MAIL**

Mr. Ethan Ware
Williams Mullen
1441 Main Street, Wells Fargo Building
Suite 1250
Columbia, SC 29201

Re: Special Notice Letter for Remedial Investigation/Feasibility Study for Operable Unit 2 at Burlington Industries Cheraw Superfund Site in Cheraw, Chesterfield County, South Carolina

Dear Mr. Ware:

This letter follows the general notice letter that the U.S. Environmental Protection Agency sent to your client, Highland Industries, Inc. (Highland), on January 31, 2017, in connection with the removal action at the Burlington Industries Cheraw Superfund Site (the Site) located in Cheraw, Chesterfield County, South Carolina. In that letter, the EPA notified Highland of its potential responsibility under Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or "Superfund"), 42 U.S.C. § 9607(a), for the investigation, characterization and cleanup of the Site, including all costs incurred by the EPA in responding to releases at the Site.

The "Site" shall generally mean the Burlington Industries Cheraw Superfund Site, located in Cheraw, Chesterfield County, South Carolina that includes the northwest portion of Highland Plant, located at 650 Chesterfield Highway, the Drying Bed Property, the Residential Properties along the Western Ditch, Huckleberry Park, the Town Lot, and the Western Ditch, which flows into an unnamed intermittent creek, and the various other recreational, residential, or commercial properties situated along and including the roughly three and two tenths (3.2) mile-long drainage corridor beginning at the unnamed intermittent creek, which flows into wetlands and flows in an easterly direction to Wilson Branch, which flows in a northeasterly direction for about one half (0.5) mile to Huckleberry Branch, which then flows east/southeast for about one and one half (1.5) miles, and flows into the Great Pee Dee River, and the areal extent of contamination. Operable Unit 1 is comprised of the Drying Beds. Operable Unit 2 is comprised of all portions of the Site other than the Drying Beds.

Background

Based on an extensive review of records related to the release and/or disposal of hazardous substances at the Site, the EPA identified Highland as a potentially responsible party (PRP) that contributed hazardous substances to Operable Unit 2 of the Site. Under the federal Superfund law, Highland is responsible for the costs of cleaning up Operable Unit 2. The South Carolina Department of Health and Environmental Control (SCDHEC) originally referred the Site to the EPA on October 4, 2016, based on elevated

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Attachment A

concentrations of polychlorinated biphenyl (PCBs) in residential properties and surface water drainage units. The EPA completed a Removal Site Evaluation (RSE) on December 14, 2016, and based on SCDEHC's previous widespread sampling, determined that the Site poses a threat to public health and the environment that meets the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) Section 300.415(b) criteria for removal actions.

On April 25, 2017, the EPA signed an Action Memorandum for the Site to conduct a fund lead time-critical removal action to excavate PCB-contaminated soils in certain residential properties as well as remove playground equipment and underlying sand from Huckleberry Park. On July 13, 2017, the EPA signed a Ceiling Increase Action Memorandum to excavate soil in additional residential properties. The Western Ditch was not included in the scope of work for either Action Memorandum. On October 13, 2017, the EPA completed the removal actions on these properties.

On September 18, 2017, Highland signed an Administrative Settlement Agreement and Order On Consent (ASAOC) under which Highland agreed to perform a complete assessment and delineation of surface and subsurface soils and sediments to determine the presence of total PCBs above a preliminary "cleanup criteria concentration" of 1 ppm at the following locations: the northwest portion of the Highland Plant; the Western Ditch, Huckleberry Park; and the property located between the cut bank of the Western Ditch and the boundary marker on the residential properties located along the Western Ditch. The work is ongoing. As a result of flooding from Hurricane Florence in September 2018 and Hurricane Michael in October 2018, additional emergency removal actions were warranted on some residential properties that are part of the Site. The EPA established two new sites to perform the removal actions related to the Hurricane. The EPA conducted these removal actions with some participation and assistance by Highland.

The EPA listed the Site on the National Priority List (NPL) pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, on May 17, 2018 (83 Fed. Reg. 22859). Following listing on the NPL, the next step in the remedial process is further investigation of the Site through performance of a Remedial Investigation and Feasibility Study (RI/FS) for Operable Unit 2 at the Site. A RI identifies the Site characteristics and defines the nature and extent of soil, air, surface water, and groundwater contamination at the Site and risks posed by the Site. An FS evaluates different cleanup options for the Site.

Special Notice and Negotiation Moratorium

The EPA has determined that use of the special notice procedures set forth in Section 122(e) of ERCLA, 42 U.S.C. § 9622(e), may facilitate a settlement between Highland and the EPA for performance of a RI/FS for Operable Unit 2 at the Site. Under Section 122(e), this letter triggers a 60-day moratorium on certain EPA response activities for Operable Unit 2 at the Site. During this 60-day period, Highland is invited to participate in formal negotiations with the EPA in an effort to reach a settlement to conduct or finance the RI/FS for Operable Unit 2. The 60-day negotiation period ends on **May 6, 2019**. The 60-day negotiation moratorium will be extended for an additional 30 days if Highland provides the EPA with a "good faith offer" to conduct or finance the RI/FS for Operable Unit 2. If the EPA determines that Highland's proposal is not a "good faith offer," the company will be notified in writing of the EPA's decision to end the moratorium. Under this 90-day negotiation moratorium, negotiations will conclude

on **June 5, 2019**. If settlement is reached between the EPA and Highland within the 90-day negotiation moratorium, the settlement will be embodied in an ASAO for RI/FS for Operable Unit 2.

Good Faith Offer

A proposed ASAO for the RI/FS for Operable Unit 2 is enclosed to assist Highland in developing a "good faith offer." As indicated, the 60-day negotiation moratorium triggered by this letter is extended for 30 days if Highland submits a "good faith offer" to the EPA. A "good faith offer" to conduct or finance the RI/FS is a written proposal that demonstrates Highland's qualifications and willingness to conduct or finance the RI/FS for Operable Unit 2, and includes the following elements:

- A statement of Highland's willingness to conduct or finance an RI/FS for Operable Unit 2 that is consistent with the EPA's Statement of Work and draft ASAO and provides a sufficient basis for further negotiations;
- A response to and any comments regarding the EPA's Statement of Work and draft ASAO;
- A detailed description of the work plan identifying how Highland intends to proceed with the work;
- A demonstration of Highland's technical capability to carry out the RI/FS for Operable Unit 2, including the identification of the firm(s) that may actually conduct the work or a description of the process they will use to select the firm(s);
- A demonstration of the Highland's capability to finance the RI/FS for Operable Unit 2; and
- A statement of Highland's willingness to reimburse the EPA for costs the EPA will incur in overseeing Highland's implementation of the RI/FS for Operable Unit 2.

You will note that the EPA is not pursuing the recovery of past costs in this settlement. The past costs will be resolved in the settlement for the performance of the Remedial Design and Remedial Action.

Ability to Pay

In your email dated November 21, 2018, you asserted that Highland might face a severe financial hardship by conducting the cleanup at the Site. The EPA is aware that the financial ability of some PRPs to contribute toward the payment of response costs at a site may be substantially limited. In response, we require that you substantiate Highland's financial hardship claim by submitting detailed financial documentation for our review. If you believe, and can document, that Highland falls within that category, we have enclosed a package of information about the potential for such settlements and a form to fill out with information about Highland's finances. Highland will be asked to submit financial records including the last five years' federal income tax returns. To date, the EPA has not received any documentation to support your inability to pay claim. The EPA also anticipates expending additional funds for response activities, which may include a remedial action or oversight of a remedial action.

Whether the EPA funds the response action or simply incurs costs by overseeing a party conducting the response activities, Highland is potentially liable for the expenditures plus interest.

Some or all of the costs associated with this notice may be covered by current or past insurance policies issued to Highland. Most insurance policies will require that you timely notify your carrier(s) of a claim against you. To evaluate whether Highland should notify its insurance carrier(s) of this demand, you may wish to review current and past policies, beginning with the date of Highland's first contact with the Site, up to the present. Coverage depends on many factors, such as the language of the particular policy and state law.

In the event that Highland files for protection in a bankruptcy court, Highland must include the EPA as a creditor, because the EPA has a potential claim against it. The EPA reserves the right to file a proof of claim or application for reimbursement of administrative expenses.

Administrative Record

In accordance with Section 113 of CERCLA, 42 U.S.C. § 9613, the EPA will determine the contents of the administrative record file for selection of the remedial action for Operable Unit 2. Highland shall submit to the EPA documents developed during the course of the RI/FS for Operable Unit 2 upon which selection of the remedial action may be based. The EPA has established an Administrative Record containing the documents that serve as the basis for the EPA's selection of the appropriate response action thus far for the Site. This Administrative Record is located at the Matheson Memorial Library in Cheraw, Chesterfield County, South Carolina, and is available to the public for inspection and comment. The Administrative Record is also available for inspection and comment at the Superfund Records Center, EPA Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, S.W., Atlanta, Georgia 30303. Highland may wish to review the Administrative Record to assist the company in responding to this letter, but the review should not delay such response beyond the 60-day period provided by CERCLA.

PRP Response and EPA Contact Person

Highland is encouraged to contact the EPA within 15 days of receipt of this letter to indicate its willingness to participate in future negotiations concerning Operable Unit 2 and notify the EPA whether it will be completing the Ability to Pay financial documentation. If the EPA does not receive a timely response, the EPA will assume that Highland does not wish to negotiate a resolution of its liabilities in connection with Operable Unit 2, and that Highland has declined any involvement in performing the response activities for Operable Unit 2.

Highland's response to this Special Notice, including written proposals to perform the RI/FS for Operable Unit 2 at the Site should be sent to:

Marianne Lodin
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303
(404) 562-9547; lodin.marianne@epa.gov

To facilitate a timely settlement, the EPA would like to schedule a conference call with Highland within **10 calendar days of receipt of this letter** to begin answering questions that Highland may have about the enclosed ASAO and attachments. Thereafter, the EPA believes it would be productive to schedule weekly or bi-weekly conference calls to answer any questions that Highland has as you are preparing Highland's response to this letter. **Please be mindful that the ASAO and the attachments are model documents. Therefore, the revisions that Region 4 can make to the enclosed documents are limited.**

The factual and legal discussions in this letter are intended solely to provide notice and information, and such discussions are not to be construed as a final EPA position on any matter set forth herein. Due to the seriousness of the environmental and legal problems posed by the conditions at the Site, the EPA urges Highland to give immediate attention and prompt response to this letter.

If you have any questions regarding this letter, please contact the Site Attorney, Marianne Lodin, at (404) 562-9547. My staff and I look forward to working with Highland during the coming months.

Sincerely,

A handwritten signature in dark ink, appearing to read "Randall Chaffins", written over a horizontal line.

Randall Chaffins, Acting Chief
Restoration and Site Evaluation Branch
Superfund Division
U.S. Environmental Protection Agency, Region 4

Enclosures

cc: Daphne Neel, SCDHEC